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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
WRIT PETITION NO. 915 OF 2002

Shri.Ishwar Waughji Nagudkia .. Petitioner
vs
Smt Diwaliben Keshaji Sapra .. Respondents
& ors.
..
Ms Gauri Godse for Petitioner
Mr.T.D.Deshmukh for Respondents
CORAM : D.G.KARNIK, J
DATE: 21ST JUNE, 2004.

P.C.

1. Heard learned counsel for the parties.

2. Admittedly, the tenant on the date of filing of the notice was a defaulter in payment of rent for more than six months and he failed to pay the rent within one month from the date of notice. The respondent-landlord therefore filed a suit for possession on the ground of default. The tenant appears to have deposited arrears of rent in court on 6th October, 1996. On this basis, learned counsel for the petitioner contended that the tenant had deposited the rent as contemplated under section 12 (3) of the Bombay Rent Act and therefore, the tenant was protected. Under section 12 (3) a tenant is required to deposit the arrears of rent with interest in court on or before the first day of hearing. Issues were framed on 17th March, 1995. The tenant deposited the rent on 6th October, 1996. The tenant therefore had not deposited the rent at the first day of hearing. However, relying upon the judgment of the apex court in Vasant Ganesh Damle vs Shrikant Trimbak Datar reported in 2002 (4) SCC 1831, learned counsel contends that the rent could be deposited on such other date as the court may fix. The very fact that the court permitted the tenant to deposit rent in court on 16th October, 1996 shows that the court had impliedly extended the time for payment and had fixed that date as the date for payment. No application was made to the court for permission to deposit the rent and rent appears to have been simply deposited without an order of the court. It therefore cannot be said that Court had extended the time for payment by fixing such other date for payment of rent in the court.

3. Assuming however, that the other view is possible, what section 12 (3) requires is that not only the tenant deposits rent in court on the first date of hearing or on such other date as the court may fix but, also pay the further rent regularly. This is clear from the words " and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided. "

4. Admittedly, after depositing the arrears on 6th October, 1996 the tenant did not make further payments regularly. Next payment was made seventeen months later on 6th March, 1998. Therefore the second condition requiring the tenant to pay further rent regularly was not fulfilled. The tenant cannot claim protection against eviction under sub-section 3 of section 12 of the Bombay Rent Act.

5. For the reasons mentioned above, the petition is rejected.

6. After the judgment is dictated, learned counsel for the petitioner prays that interim stay granted by this court be continued for sometime. Stay is extended by eight weeks from today.

7. Authenticated copy allowed.

D.G.KARNIK, J

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